

## **Assembly Bill No. 2111**

### **CHAPTER 543**

An act to amend Sections 9855, 9855.1, 9855.2, and 9855.9 of, and to add Sections 9855.15 and 9855.85 to, the Business and Professions Code, to amend Section 1794.41 of the Civil Code, and to amend Section 12800 of the Insurance Code, relating to service contracts.

[Approved by Governor September 29, 2010. Filed with  
Secretary of State September 29, 2010.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2111, Smyth. Service contracts.

(1) Existing law, the Electronic and Appliance Repair Dealer Registration Law, makes it unlawful for any person to act as a service contract administrator or a service contract seller without first registering with the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

Existing law regulates service contracts, as defined, relating to maintenance or repair of, among other things, specified sets and appliances. A service contract may include provisions for incidental payment of indemnity, not exceeding the retail value of \$250 per year. Existing law prohibits a service contract administrator, as defined, from being an obligor, as defined, on a service contract and existing law requires these service contract administrators to maintain a service contract reimbursement insurance policy, as defined.

This bill would change the definition of service contract by expanding the items a contract may cover to include accessories of electronic sets or appliances and by excluding a contract to maintain structural wiring associated with communications services. The bill would delete the \$250 per year limit on incidental payment of indemnity. The bill would also change the definition of service contract administrator to no longer exclude service contract sellers and insurers admitted to do business in the state and to no longer include an affiliate who performs or arranges specified activities. The bill would authorize a service contract administrator to be an obligor on a service contract where all service contracts under which the service contract administrator is obligated are insured under a service contract reimbursement insurance policy.

Existing law defines a service contract seller as a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

This bill would specify that a service contract seller also means a 3rd party, including an obligor who is not the seller, manufacturer, or repairer

of the product and does not include specified financial institutions or specified electrical device manufacturers or electrical contractors. The bill would require a 3rd-party obligor to obtain a service contract reimbursement insurance policy. The bill would specify that a service contract administrator or a 3rd-party seller acting as an obligor without a service contract reimbursement insurance policy shall be deemed to be unlawfully transacting the business of insurance and therefore subject to specified criminal and monetary penalty provisions. Because willfully transacting the business of insurance without a certificate of authority would constitute a crime, the bill would impose a state-mandated local program.

Existing law prohibits a service contract seller from issuing a service contract without complying with specific requirements.

This bill would instead prohibit a service contract seller from issuing a service contract unless the obligor under the contract has complied with specific requirements.

Existing law makes these provisions relating to service contracts inoperative on January 1, 2013.

This bill would extend the operation of these provisions to January 1, 2018.

The bill would make other technical and clarifying changes.

(2) Existing law prohibits a service contract covering any motor vehicle, home appliance, or home electronic product purchased for use in this state from being offered for sale or sold unless several elements exist, including that the contract is cancelable by the purchaser under certain conditions. Existing law provides for either a full or pro rata refund depending on the circumstances.

This bill would enact new provisions applicable to pro rata refunds made in the case of canceled vehicle service contracts.

(3) Existing law defines vehicle service contract for purposes of provisions relating to sellers of vehicles, and exempts a warranty provided by a vehicle glass manufacturer from the requirements governing a vehicle service contract.

This bill would add a warranty provided by a glass sealant manufacturer to the exemption.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) “Service contract” means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of an electronic set or appliance, as defined by this chapter, and their accessories or of furniture, jewelry, lawn and garden equipment, power tools, fitness equipment, telephone equipment, small kitchen appliances and tools, or home health care products, and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” does not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services.

(b) “Service contract administrator” or “administrator” means a person who performs or arranges the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges any of the following activities on behalf of service contract sellers:

- (1) Providing service contract sellers with service contract forms.
- (2) Participating in the adjustment of claims arising from service contracts.
- (3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract unless all service contracts under which the service contract administrator is obligated to perform are insured under a service contract reimbursement insurance policy.

(c) (1) “Service contract seller” or “seller” means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(2) “Service contract seller” or “seller” also means a third party, including an obligor, who is not the seller, manufacturer, or repairer of the product. However, a third party shall not be an obligor on a service contract unless the obligor obtains a service contract reimbursement insurance policy for all service contracts under which the third party is obligated under the terms of a service contract.

(3) “Service contract seller” or “seller” shall not include the following:

(A) A bank or bank holding company, or the subsidiary or affiliate of either, or a financial institution, licensed under state or federal law, selling or offering to sell a service contract unless that entity is financially and legally obligated under the terms of a service contract.

(B) An electrical device manufacturer or electrical contractor who constructs, installs, or services electrical devices, which include any unit of an electrical system intended to carry electrical energy as part of a building’s electrical system, including raceways, conductors, invertors, conduit, wires, switches, or other similar devices.

(d) “Service contractholder” means a person who purchases or receives a service contract from a service contract seller.

(e) “Service contractor” means a service contract administrator or a service contract seller.

(f) “Service contract reimbursement insurance policy” means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) “Obligor” is the entity financially and legally obligated under the terms of a service contract.

(h) The terms “consumer goods,” “manufacturer,” “retail seller,” “retailer,” and “sale” shall have the same meanings ascribed to them in Section 1791 of the Civil Code.

SEC. 2. Section 9855.1 of the Business and Professions Code is amended to read:

9855.1. (a) It shall be unlawful for any person to act as a service contractor in this state unless that person first registers with the bureau in accordance with the provisions of this chapter and maintains a valid registration.

(b) Except as expressly provided in this chapter, service contractors registered in accordance with the provisions of this chapter shall be exempt from all provisions of the Insurance Code.

SEC. 3. Section 9855.15 is added to the Business and Professions Code, to read:

9855.15. A service contract administrator who is an obligor on a service contract and is registered as a service contract administrator may perform all the functions permitted by a seller and shall not be required to register separately as a seller.

SEC. 4. Section 9855.2 of the Business and Professions Code is amended to read:

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless the obligor under the service contract has complied with one of the following requirements:

(1) Files with the director one of the following:

(A) The most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

(B) The most recent audited financial statement reflecting a net worth of not less than one hundred million dollars (\$100,000,000). The financial statement shall be certified by a certified public accountant who is licensed

in the state where the service contract seller maintains its principal place of business or the seller's state of domestic incorporation.

(2) Obtains a service contract reimbursement insurance policy.

(3) Sells service contracts that are administered by a service contract administrator who has obtained a service contract reimbursement insurance policy covering the seller's service contracts.

(4) Maintains and annually verifies to the director a funded account held in escrow equal to a minimum of 25 percent of the deferred revenues from the service contracts in force.

(b) A service contract administrator shall not administer service contracts sold in this state unless a service contract reimbursement insurance policy covering these service contracts has been obtained.

SEC. 5. Section 9855.85 is added to the Business and Professions Code, to read:

9855.85. Unless otherwise lawfully transacting the business of insurance pursuant to a certificate of authority issued pursuant to Section 700 of the Insurance Code for the appropriate class, a service contract administrator or third-party seller acting as an obligor on a service contract without having a service contract reimbursement insurance policy covering all service contracts under which the service contract administrator or third-party seller is obligated shall be deemed to be unlawfully transacting the business of insurance and shall be subject to subdivision (b) of Section 700 and Section 12921.8 of the Insurance Code.

SEC. 6. Section 9855.9 of the Business and Professions Code is amended to read:

9855.9. This article shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 7. Section 1794.41 of the Civil Code is amended to read:

1794.41. (a) No service contract covering any motor vehicle, home appliance, or home electronic product purchased for use in this state may be offered for sale or sold unless all of the following elements exist:

(1) The contract shall contain the disclosures specified in Section 1794.4 and shall disclose in the manner described in that section the buyer's cancellation and refund rights provided by this section.

(2) The contract shall be available for inspection by the buyer prior to purchase and either the contract, or a brochure which specifically describes the terms, conditions, and exclusions of the contract, and the provisions of this section relating to contract delivery, cancellation, and refund, shall be delivered to the buyer at or before the time of purchase of the contract. Within 60 days after the date of purchase, the contract itself shall be delivered to the buyer. If a service contract for a home appliance or a home electronic product is sold by means of a telephone solicitation, the seller may elect to satisfy the requirements of this paragraph by mailing or delivering the contract to the buyer not later than 30 days after the date of the sale of the contract.

(3) The contract is applicable only to items, costs, and time periods not covered by the express warranty. However, a service contract may run concurrently with or overlap an express warranty if (A) the contract covers items or costs not covered by the express warranty or (B) the contract provides relief to the purchaser not available under the express warranty, such as automatic replacement of a product where the express warranty only provides for repair.

(4) The contract shall be cancelable by the purchaser under the following conditions:

(A) Unless the contract provides for a longer period, within the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, within the first 30 days after receipt of the contract, the full amount paid shall be refunded by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract, and if no claims have been made against the contract. If a claim has been made against the contract either within the first 60 days after receipt of the contract, or with respect to a used motor vehicle without manufacturer warranties, home appliance, or home electronic product, within the first 30 days after receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, or for a vehicle service contract at the obligor's option as determined at the time of cancellation, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract.

(B) Unless the contract provides for a longer period for obtaining a full refund, after the first 60 days after receipt of the contract, or with respect to a contract covering a used motor vehicle without manufacturer warranties, a home appliance, or a home electronic product, after the first 30 days after the receipt of the contract, a pro rata refund, based on either elapsed time or an objective measure of use, such as mileage or the retail value of any service performed, at the seller's option as indicated in the contract, or for a vehicle service contract at the obligor's option as determined at the time of cancellation, shall be made by the seller to the purchaser if the purchaser provides a written notice of cancellation to the person specified in the contract. In addition, the seller may assess a cancellation or administrative fee, not to exceed 10 percent of the price of the service contract or twenty-five dollars (\$25), whichever is less.

(C) If the purchase of the service contract was financed, the seller may make the refund payable to the purchaser, the assignee, or lender of record, or both.

(b) Nothing in this section shall apply to a home protection plan that is issued by a home protection company which is subject to Part 7 (commencing with Section 12740) of Division 2 of the Insurance Code.

(c) If any provision of this section conflicts with any provision of Part 8 (commencing with Section 12800) of Division 2 of the Insurance Code, the provision of the Insurance Code shall apply instead of this section.

SEC. 8. Section 12800 of the Insurance Code is amended to read:

12800. The following definitions apply for purposes of this part:

(a) “Motor vehicle” means a self-propelled device operated solely or primarily upon land and may include both self-propelled motor homes or recreational vehicles, non-self-propelled camping and recreational trailers, off-road vehicles, and trailers designed to transport off-road vehicles. However, “motor vehicle” shall not include a self-propelled vehicle, or a component part of such a vehicle, that has any of the following characteristics:

(1) Has a gross vehicle weight rating of 30,000 pounds or more, and is not a recreational vehicle as defined by Section 18010 of the Health and Safety Code.

(2) Is designed to transport more than 15 passengers, including the driver.

(3) Is used in the transportation of materials considered hazardous pursuant to the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), as amended.

(b) “Watercraft” means a vessel, as defined in Section 21 of the Harbors and Navigation Code, and may include any non-self-propelled trailer used to transport such watercraft upon land.

(c) (1) “Vehicle service contract” means a contract or agreement for a separately stated consideration and for a specific duration to repair, replace, or maintain a motor vehicle or watercraft, or to indemnify for the repair, replacement, or maintenance of a motor vehicle or watercraft, necessitated by an operational or structural failure due to a defect in materials or workmanship, or due to normal wear and tear.

(2) A vehicle service contract may also provide for the incidental payment of indemnity under limited circumstances only in the form of the following additional benefits: coverage for towing, substitute transportation, emergency road service, rental car reimbursement, reimbursement of deductible amounts under a manufacturer’s warranty, and reimbursement for travel, lodging, or meals.

(3) “Vehicle service contract” also includes an agreement of a term of at least one year, for separately stated consideration, that promises routine maintenance.

(4) Notwithstanding Section 116, and paragraphs (1) and (2) of this subdivision, a vehicle service contract also includes one or more of the following:

(A) An agreement that promises the repair or replacement of a tire or wheel necessitated by wear and tear, defect, or damage caused by a road hazard. However, an agreement that promises the repair or replacement of a tire necessitated by wear and tear, defect, or damage caused by a road hazard, in which the obligor is the tire manufacturer, is exempt from the requirements of this part. A warranty provided by a tire or wheel distributor or retailer is exempt from the requirements of this part as long as the

warranty covers only defects in the material or workmanship of the tire or wheel.

(B) An agreement that promises the repair or replacement of glass on a vehicle necessitated by wear and tear, defect, or damage caused by a road hazard. However, a warranty provided by a vehicle glass or glass sealant manufacturer is exempt from the requirements of this part. A warranty provided by a vehicle glass distributor or retailer is exempt from the requirements of this part as long as the warranty covers only defects in the material or workmanship of the vehicle glass.

(C) An agreement that promises the removal of a dent, ding, or crease without affecting the existing paint finish using paintless dent repair techniques, and which expressly excludes the replacement of vehicle body panels, sanding, bonding, or painting.

(d) “Service contract administrator” or “administrator” means any person, other than an obligor, who performs or arranges, directly or indirectly, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a vehicle service contract, and who also performs or arranges, directly or indirectly, any of the following activities with respect to vehicle service contracts in which a seller located within this state is the obligor:

(1) Providing sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(e) “Purchaser” means any person who purchases a vehicle service contract from a seller.

(f) “Seller” means either of the following:

(1) With respect to motor vehicles, a dealer or lessor-retailer licensed in one of those capacities by the Department of Motor Vehicles and who sells vehicle service contracts incidental to his or her business of selling or leasing motor vehicles.

(2) With respect to watercraft, a person who sells vehicle service contracts incidental to that person’s business of selling or leasing watercraft vehicles.

(g) “Obligor” means the entity legally obligated under the terms of a service contract.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.